IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

APPEAL FROM ORDER NO. 78 OF 2001
WITH
CIVIL APPLICATION NO. 201 OF 2001

Mr. Avertano Paul Souza-Fernande
alias Sqn. Ldr A.P. Fernandes
R/o 231 Defence Colony,
Alto Porvorim, Bardez, Goa 403 521. .... Appellant

Versus

1. Mrs. Clarina Miranda Dias (deleted)
   Major, Widow R/o H.No. 65
   Martires Dias Rd. Aquem
   Alto, Margao 403601.

2. Mrs. Sushila Leonardo Souza-Fernandes,
   alias Sushila L. Dias,
   Age 49 years, service, Divorcee
   of Avertano Paul Souza Fernandes,
   Residing as above.

3. Mrs. Sita Leonardo Dias Chodnekar,
   alias Sita Leonardo Dias, R/o Shiv Shakti
   Housing Co-operative Society, Vasai,
   Mumbai and her husband

4. Mr. Hemant Chodnekar,
   married, r/o as above.

5. Mr. Rabindra Antonio Leonardo Dias
   major, in Govt. service and his wife

6. Mrs. Nanda Sales Dias both residing at
   Block A Dr. Pires Colony, Flat No.1,
   Santa Cruz, Ilhas, Goa.

7. Mr. Jawahar Leonardo Dias, Major,
Advocate, and his wife,

8. Felicia Mendes Dias, housewife,
H.No.65, Martires Dias Road,
Both residing at Aquem,
Alto, Margao, Goa 403 601. .... Respondents

Mr. F.J. Colaco with Ms. Tereza Colaco, Advocates for the Appellant.
None for the Respondents.

CORAM : **P.V. KAKADE, J.**

DATE : **16th NOVEMBER, 2006**

ORAL JUDGMENT :

Heard the learned Counsel for the appellant. None appears for the respondents.

2. This is an appeal aimed against the judgment and order passed by the Comarca Judge of Salcete and Quepem at Margao rejecting the application of third party to intervene in the Inventory Proceedings.

3. The applicant submitted before the lower Court that the said Inventario Proceedings were initiated by the Inventariante Smt. Clarina Miranda Dias and the Court had appointed the said person as Cabeca de

Casal. The applicant sought to make out the case that he was married to Sushila L. Dias, daughter of the Estate leaver on 14/9/1986 and the marriage subsisted till 7/2/1991, when the applicant got a decree of divorce against the said Sushila Dias under Article 4(4) of the Law of Divorce. Therefore, he prayed that he be added as interested party to the Inventario Proceedings.

4. The factual matrix was that the marriage between Sushila L. Dias and Avertano Fernandes was solemnized in Bombay and was not registered in Goa. Hence, the custom of communion of assets would not apply to the marriage celebrated under the Special Marriage Act in Bombay. This being so, the application was opposed submitting that the said applicant, Avertano Fernandes could not claim any right in that estate of the deceased and, therefore, the application was sought to be dismissed.

5. After hearing both the parties, the learned Comarca Judge came to the conclusion that privilege to avail the right under communion of assets offered under Portuguese Law was not availed by the parties. This privilege can be taken by parties who register their marriage in Goa. The divorce obtained in Goa only proves the dissolution of marriage and does

not cover the privilege of communion of assets which option is given to parties who celebrate and register the marriage before Sub-Registrar as per Codigo Civil de Casamento and as such, the application came to be dismissed.

Hence, the present appeal.

6. In the course of his arguments, the learned Counsel for the applicant sought to rely upon several provisions of the Portuguese Law, which according to him were argued before the lower Court, but the lower Court did not take those provisions into account and proceeded to dismisse the application. The application for review was also, according to him, was preferred, but was also rejected giving no detailed reason. In view of this position and under the circumstances, I am of the view that the matter is fit to be remanded to the Court of Civil Judge, Senior Division, Margao for fresh appraisal on the basis of submissions advanced on behalf of the present applicant. Hence, the impugned order passed by the lower Court is set aside. The matter is remanded to the lower Court with direction that the parties should be heard on the application dated 30/3/1999 (Exhibit 6) and the application should be disposed of within a period of 2 months from the date of receipt of the writ of this Court. With these directions, the

appeal stands disposed of with no order as to costs. Consequently, civil application no. 201 of 2001 also stands disposed of with no order as to costs.

P.V. KAKADE, J.

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